

1 Robert G. Abrams  
2 Thomas A. Isaacson  
3 Peter A. Barile III  
4 HOWREY LLP  
5 1299 Pennsylvania Avenue, N.W.  
6 Washington, DC 20004  
7 Tel.: (202) 783-0800  
8 Fax: (202) 383-6610

9 Paul Alexander  
10 HOWREY LLP  
11 1950 University Avenue  
12 East Palo Alto, CA 94303  
13 Tel.: (650) 798-3500  
14 Fax: (650) 798-3600

15 Emily L. Maxwell  
16 HOWREY LLP  
17 525 Market Street, Suite 3600  
18 San Francisco, CA 94105  
19 Tel.: (415) 848-4947  
20 Fax: (415) 848-4999  
**Lead Class Counsel**

21 Guido Saveri  
22 R. Alexander Saveri  
23 Cadio Zirpoli  
24 SAVERI & SAVERI, INC.  
25 706 Sansome Street  
26 San Francisco, CA 94111  
27 Tel.: (415) 217-6810  
28 Fax: (415) 217-6813  
**Liaison Class Counsel**

[Additional counsel on signature page.]

Jonathan M. Jacobson  
Sara Ciarelli Walsh  
WILSON SONSINI GOODRICH & ROSATI, PC  
1301 Avenue of the Americas  
40th Floor  
New York, NY 10019  
Tel.: (212) 999-5800  
Fax: (212) 999-5899  
**Counsel for Defendant Netflix, Inc.**

Neal Manne  
Richard W. Hess  
SUSMAN GODFREY L.L.P.  
1000 Louisiana Street, Suite 5100  
Houston, Texas 77002  
Tel: (713) 651-9366  
Fax: (713) 654-6666  
**Counsel for Defendants Wal-Mart Stores, Inc.  
and Walmart.com USA LLC**

[Additional counsel on signature page.]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE ONLINE DVD RENTAL  
ANTITRUST LITIGATION

Master File No. M:09-CV-2029 PJH

MDL No. 2029

Hon. Phyllis J. Hamilton

This document relates to:

ALL ACTIONS

STIPULATION AND [PROPOSED]  
PRETRIAL ORDER NO. 4 REGARDING  
EXPERT DISCOVERY TO BE  
FOLLOWED IN MDL No. 2029

STIPULATION AND [PROPOSED] ORDER RE: EXPERT DISCOVERY

MDL No. 2029

960437v1/011148

1       The Plaintiffs and Defendants agree as follows regarding the timing and scope of any expert  
2 discovery in this case, relating to both class certification and the merits, and hereby agree and submit  
3 this stipulation and proposed order:

4       1. Within 7 business days of any party serving any expert reports and/or expert declarations  
5 in this litigation pursuant to Fed. R. Civ. P. 26(a)(2)(B), the party or parties proffering the expert  
6 witness shall produce: the data or other information ***relied upon*** by the expert in forming the expert's  
7 opinions; any exhibits that will be used to summarize or support the expert's opinions; the witness's  
8 qualifications, including a list of all publications authored in the previous 10 years; a list of all other  
9 cases in which, during the previous four years, the witness has testified as an expert at trial or by  
10 deposition; a statement of the compensation to be paid for the study and testimony in the case. Data  
11 or other information ***relied upon*** shall include, but is not limited to, underlying data, spreadsheets,  
12 computerized regression analysis and/or other underlying reports and schedules sufficient to  
13 reconstruct the expert's work, calculations, and/or analyses. Information should be produced  
14 electronically (via email or disc) where appropriate. Where documents have previously been  
15 produced as part of the discovery, identification by Bates number is sufficient. As to other  
16 documents relied upon by the expert, documents that are publicly available need not be produced  
17 absent specific request.

18       2. The following types of information shall *not* be subject of any form of discovery:  
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20           (1) the content of communications among and between: (a) counsel and the expert and/or the  
21 expert's staff and/or supporting firms; (b) counsel and any non-testifying expert consultant and/or  
22 the consultant's staff; (c) the expert and other experts and/or other non-testifying expert consultants;  
23 (d) experts and their staff and/or supporting firms; (e) non-testifying expert consultants and their  
24 staffs; (f) the respective staffs and/or supporting firms of experts or non-testifying expert consultants  
25 and the staffs and/or supporting firms of other experts or non-testifying expert consultants.

26           (2) notes, drafts, written communications or other records of preliminary work created by, or  
27 for, experts or non-testifying expert consultants.  
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The foregoing exclusions from discovery will not apply to any information, communications or documents upon which the expert *relies* as a basis for his or her opinion.

3. This Stipulation shall be effective only upon agreement of Plaintiffs and Defendants.

Dated: Aug 20, 2009

Respectfully Submitted,

/s/ Robert G. Abrams

Robert G. Abrams

Thomas A. Isaacson

Peter A. Barile III

HOWREY LLP

1299 Pennsylvania Ave.  
NW, 14th & F Sts., D.C. 20004

Washington, DC 200  
T: 1-(800) 523-2285

Fax: (202) 323-6618

Fax: (202) 383-6610

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Paul Alexander  
Howell J.P.

HOWREY LLP  
1050 University Ave.

1930 University Ave.  
East Palo Alto, CA 94303

East Palo Alto, CA 94303  
Tel: (650) 798-3500

Tel.: (650) 798-5500  
Fax: (650) 798-3600

Fax: (650) 738-5000

Emily L. Maxwell

HOWREY LLP

525 Market Street, Suite 3

San Francisco, CA 94105

Tel.: (415) 848-4947

Fax: (415) 848-4999

***Lead Class Counsel for Plaintiffs and the Proposed Class***

*Who attest in accordance with General Order No. 45 X. B. that concurrence in the filing of the document has been obtained from each of the undersigned counsel:*

Guido Saveri  
R. Alexander Saveri  
Melissa Shapiro  
Cadio Zirpoli  
SAVERI & SAVERI, INC.  
706 Sansome Street  
San Francisco, CA 94111  
Tel.: (415) 217-6810  
Fax: (415) 217-6813

***Liaison Class Counsel for Plaintiffs and the Proposed Class***

1 Joseph J. Tabacco, Jr.  
2 Christopher T. Heffelfinger  
3 Todd A. Seaver  
BERMAN DEVALERIO  
425 California Street, Suite 2100  
San Francisco, CA 94104  
Tel.: (415) 433-3200  
Fax: (415) 433-6382

5  
6 Manuel J. Dominguez  
Daniel A. Bushell  
BERMAN DEVALERIO  
7 4280 Professional Center Drive, Suite 350  
Palm Beach Gardens, FL 33410  
8 Tel: (561) 835-9400  
Fax: (561) 835-0322

9  
10 Eugene A. Spector  
Jeffrey J. Corrigan  
William G. Caldes  
Theodore M. Lieverman  
11 Jay S. Cohen  
Jonathan M. Jagher  
12 SPECTOR ROSEMAN KODROFF & WILLIS, P.C.  
1818 Market Street, Suite 2500  
Philadelphia, PA 19103  
13 Tel.: (215) 496-0300  
14 Fax: (215) 496-6611

15  
16 H. Laddie Montague, Jr.  
Merrill G. Davidoff  
David F. Sorensen  
Peter Kohn  
17 BERGER & MONTAGUE, P.C.  
1622 Locust Street  
19 Philadelphia, PA 19103  
20 Tel.: (215) 875-3010  
Fax: (215) 875-4604

21 *Members of the Steering Committee for Plaintiffs*

22 Jonathan M. Jacobson  
Sara Ciarelli Walsh  
23 WILSON SONSINI GOODRICH & ROSATI, PC  
1301 Avenue of the Americas  
24 40th Floor  
25 New York, NY 10019  
26 Tel.: (212) 999-5800  
Fax: (212) 999-5899

Keith E. Eggleton  
WILSON SONSINI GOODRICH & ROSATI  
650 Page Mill Road  
Palo Alto, Ca 94304-1050  
Tel: (650) 493-9300  
Fax: (650) 565-5100

Scott Andrew Sher  
WILSON SONSINI GOODRICH & ROSATI  
1700 K Street, NW, Fifth Floor  
Washington, DC 20006  
Tel: (202) 973-8800  
Fax: (202) 973-8899

*Counsel for Defendant Netflix, Inc.*

Neal Manne  
Richard W. Hess  
SUSMAN GODFREY L.L.P.  
1000 Louisiana Street, Suite 5100  
Houston, Texas 77002  
Tel: (713) 651-9366  
Fax: (713) 654-6666

Genevieve Vose  
SUSMAN GODFREY L.L.P.  
1201 Third Ave., Suite 3800  
Seattle, WA 98101-3000  
Tel: (206) 516-3836  
Fax: (206) 516-3883

Kathryn P. Hoek  
Stephen E. Morrissey  
Marc M. Seltzer  
**SUSMAN GODFREY L.L.P.**  
1901 Avenue of the Stars, Suite 950  
Los Angeles, CA 90067-6029  
Tel.: 310-789-3100  
Fax: 310-789-3150

*Counsel for Defendants Wal-Mart Stores, Inc.  
and Wal-Mart.com USA LLC*

1 **[PROPOSED] ORDER**  
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4 **IT IS SO ORDERED.**  
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DATED: August 21, 2009

PHYLIS J. HAMILTON  
UNITED STATES DISTRICT JUDGE

